

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Inventors:	Eiko SEIDEL, et al.	Art Unit 2133
Appln. No.:	10/567,825	Conf. No. 2113
Filed:	February 10, 2006	
For:	TIME MONITORING OF PACKET RETRANSMISSIONS DURING SOFT HANDOVER	

SUPPLEMENTAL PETITION TO MAKE SPECIAL AND
SUMMARY OF SUBSTANCE OF TELEPHONE INTERVIEW

Assistant Commissioner of Patents
Washington, DC 20231

Sir:

This Supplemental Petition is in response to the Decision ON
Petition of June 15, 2007.

During a telephone interview on June 28, 2007, between the
undersigned and Quality Assurance Specialist, Brian L. Johnson,
the undersigned and the Quality Assurance Specialist discussed
the rationale behind the Decision of June 15, 2007.

Initially, during this interview, the undersigned noted
that, while the Decision correctly points out that the Applicants
have identified WO '872 and US '965 as references "most closely
related" to the claimed invention, nevertheless the Decision
makes an erroneous statement at page 2 of the Decision that
"However, the discussion directed to how the language of

independent claims 40 and 72 patentably defines over these two references is not provided in either petition filed." The undersigned pointed out that this statement is erroneous in that the statement in the Renewed Petition at page 14, lines 12-16 directed to "None of the other references of record..." applies to WO '872 and US '965. The Quality Assurance Specialist stated that he had not read the statement in the Renewed Petition at page 14, lines 12-16 in this light. Subsequently, the Quality Assurance Specialist stated that, in the Renewed Petition filed May 11, 2007, the Applicants' statements regarding the substance of the claimed invention did not correspond to the language of the claims. The Quality Assurance Specialist indicated that if this were corrected, the Petition should be in condition for a favorable Decision on Petition. This lack of correspondence is corrected in the following comments.

The following comments are provided in order to supplement the comments in the Petition of June 21, 2006 and the Renewed Petition of May 11, 2007.

WO 02 37872 and US 2002/019965 are discussed in detail in the Renewed Petition filed May 11, 2007 (for example, see page 7, line 1 through page 8, line 17). It is noted that these references were cited in an ISR, not an ESR.

It is submitted that the references of record, including WO 02 37872 and US 2002/019965, considered either alone or together, fail to disclose or suggest at least the claimed subject matter of independent claims 40 and 72 directed to:

"using the time elapsed since storing said data in the associated soft buffer in order to flush the soft buffer" (claim 40) or

"wherein the base station is operable to use the time elapsed since storing said data in the associated soft buffer in order to flush the soft buffer" (claim 72).

The Applicants deem the art of record as having no pertinence to the above-noted subject matter of claim 40 or claim 72 beyond that already stated in the first Petition, the Renewed Petition and this Supplemental Petition.

The Applicants note that, in contrast to the above-cited claimed subject matter, in US 2004/0116143, the timer measures an expiration of a predetermined period of time after receiving a first transmission of a sub-frame in error, and in USPN 6850769, the abort timer measures an elapsed time from the time when a request for a re-transmission is sent. Also, in US 2002/172217, the buffer is flushed by sending an explicit signaling. In WO 03/017691, when a timer expires, a receiver identifies the last received erasure as an end of segment. In WO 03/017691, a timer

is started when the receiver detects an erasure. Thus, these references fail to disclose or suggest, alone or together, the present claimed subject matter of "using the time elapsed since storing said data in the associated soft buffer in order to flush the soft buffer" (claim 40) or "wherein the base station is operable to use the time elapsed since storing said data in the associated soft buffer in order to flush the soft buffer" (claim 72). None of the other references of record (including WO '872 and US '965) teaches or suggests the above-noted subject matter of claim 40 or claim 72, and thus the other references of record do not cure the deficiencies of US 2004/0116143, USPN 6850769, US 2002/172217, and WO 03/017691.

Therefore, in light of the discussion provided in this Supplemental Petition, the Renewed Petition filed May 11, 2007 and the original Petition filed June 21, 2006, pointing out in detail how the inventions of independent claims 40 and 72 distinguish over the references of record, the Applicants respectfully submit that the inventions of all the presently pending claims are not anticipated by these references and would not have been obvious over any combination of the teachings thereof.

Accordingly, grant of special status in accordance with this petition is respectfully requested.

No government fee is deemed to be due for this Supplemental Petition to Make Special, but if an official fee is considered to be required, the Office is authorized to charge such fee to deposit account no. 19-4375.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James E. Ledbetter". The signature is fluid and cursive, with a large initial "J" and "L".

James E. Ledbetter
Registration No. 28,732

Date: August 14, 2007

JEL/att

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Reg. - PTMS Reconsideration
RESPONSE DUE 8-15-07
DOCKETED DATE 6-19-07
DATE 7/27

In re Application of: Seidel, et al.
Application No. 10/567,825
Filed: February 10, 2006
For: TIME MONITORING OF PACKET
RETRANSMISSIONS DURING SOFT
HANDOVER

DECISION ON PETITION
TO MAKE SPECIAL
(ACCELERATED EXAMINATION)
UNDER M.P.E.P. §708.02 (VIII)

This is a response to the renewed petition filed May 11, 2007, under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02 (VIII): Accelerated Examination, to make the above-identified application special. The original petition filed June 21, 2006 was dismissed in a decision mailed March 21, 2007.

The renewed Petition is **DISMISSED**.

M.P.E.P. §708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. §1.102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

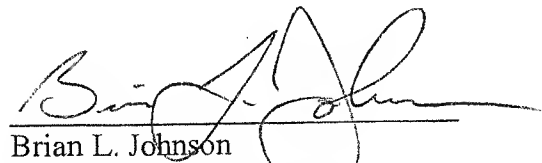
- (a) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h);
- (b) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;
- (c) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. A search made by a foreign patent office satisfies this requirement;
- (d) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and
- (e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

Note, Petitioner's explanation regarding the eight "3GPP" references is acceptable to overcome the insufficiency set forth in the decision mailed March 21, 2007. However, the renewed petition filed May 11, 2007 fails to adequately meet requirement (e) of the criteria set forth above. With respect to requirement (e), a complete detailed discussion of the identified most closely related references has not been provided with the necessary specificity required under 37 CFR 1.111 (b) and (c). Petitioner should ensure that each reference identified to be "most closely related" (as set forth above) be provided with a corresponding discussion directed to how the language of *each of* the independent claims is specifically distinguishable and patentable from each the references provided in requirement (d) above. Specifically, Petitioner identifies the following references: WO 02/37872 and US 2002/019965, to be "most closely related" (see petition filed June 21, 2006 at page 4 line 12 – page 6 line 5, and in the instant petition filed May 11, 2007 at page 2 line 15 – line 21 and page 7 line 1 – page 8 line 17). However, the discussion directed to how the language of independent claims 40 and 72 patentably defines over these two references is not provided in either petition filed.

Accordingly, the renewed Petition to Make Special is **DISMISSED**.

Since this deficiency was not identified to Petitioner in the decision mailed on March 21, 2007, Petitioner is given one last opportunity to perfect the petition. Any request for reconsideration **MUST** be filed within **TWO MONTHS** of the mail date of this decision.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.



Brian L. Johnson
Quality Assurance Specialist
Technology Center 2100
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571-272-3595



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,825	09/18/2006	Eiko Seidel	L7725.06102	2113

52989 7590 06/28/2007
STEVENS, DAVIS, MILLER & MOSHER, LLP
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WASHINGTON, DC 20036

EXAMINER

ART UNIT	PAPER NUMBER
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2112

MAIL DATE	DELIVERY MODE
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06/28/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Interview Summary

RESPONSE DUE 8-15-07
DOCKETED DATE 7-2-07
DATE 28

Interview Summary

Application No.

10/567,825

Applicant(s)

SEIDEL ET AL.

Examiner

Brian L. Johnson

Art Unit

2110

All participants (applicant, applicant's representative, PTO personnel):

(1) Brian L. Johnson.

(3) _____.

(2) James Ledbetter.

(4) _____.

Date of Interview: 20 June 2007.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.

If Yes, brief description: _____.

Claim(s) discussed: Independent claims 40 and 72.

Identification of prior art discussed: WO 02/37872 and US 2002/019965.

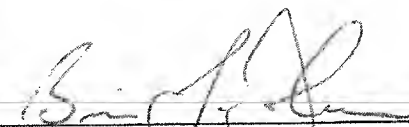
Agreement with respect to the claims f) ☒ was reached. g) ☐ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Discussed rationale behind second dismissal on pet. to make special filed May 11, 2007. The reviewer clarified to Applicant that the petition filed June 21, 2006 and supplemental petition filed May 11, 2007 provided a discussion of the references identified above but rather the discussion itself failed to accurately provide a detailed discussion directed to how the language of independent claims 40 and 72 define over these two references, consistent with the language of the instant claims. For example, note claim 40 recites --a plurality of base stations-- rather than "one or more base stations" as discussed in the petition and the step of --using the time elapsed ...-- fails to identify that it is the "one or more base stations operable to use the time elapsed ..." as discussed in the instant petition. With respect to claim 72, the claim recites --A base station-- rather than "one or more base stations" nor does this claim set forth wherein the "one or more base stations is operable to use ..." as argued.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.


Examiner's signature, if required

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiner's Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.